SUPREME COURT, U. S.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1965

No. 598

GERHARD BRASCH, *Petitioner,*

vs.

STATE COMPENSATION INSURANCE FUND,
STATE PERSONNEL BOARD,
Respondents.

On Writ of Certiorari to the Supreme Court
of the State of California

REPLY BRIEF FOR PETITIONER

GERHARD BRASCH,
3035 Gough Street, Apt. 8,
San Francisco, California 94123,
Petitioner in propria persona.

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Respondents.

On Writ of Certiorari to the Supreme Court of the State of California

REPLY BRIEF FOR PETITIONER

I.

PETITIONER DID NOT ACT IN PROPRIA PERSONA IN THE MUNICIPAL COURT AFTER FILING HIS COMPLAINT; HE WAS REPRESENTED BY ATTORNEYS.

The respondent State Compensation Insurance Fund asserts throughout its brief in opposition that petitioner, having filed his complaint in the Municipal

Court in propria persona, continued to act in propria persona before the court, even though petitioner had explained in his petition (last paragraph, pages 6-7) that an attorney represented him in court after he had filed his complaint.

This matter requires clarification. Petitioner explained on page 5 of his petition that "he could not find an attorney willing to file a complaint in his cause even though he had paid the fees of two attorneys". Of the many attorneys in San Francisco whom he asked to file a complaint in his matter, two attorneys successively in 1961 agreed to file a complaint. He gave them his papers and paid their fees. The first attorney wrote to the petitioner about two months after he had written to the respondent State Compensation Insurance Fund that he had no substantial cause of action for money damages. The second attorney informed the petitioner about three weeks after he had written to the respondent State Personnel Board that any redress now seems unavailable and that nothing further could be done in his matter. Petitioner could find no other attorney willing to file a complaint.

After petitioner had filed his complaint, the respondent State Compensation Insurance Fund demurred. Messrs. Vincent Hallinan, Carl B. Shapiro, and Patrick Sarsfield Hallinan, Attorneys at Law, 345 Franklin Street, San Francisco, California 94102 agreed to represent petitioner in his complaint against the respondents State Compensation Insurance Fund and State Personnel Board. Petitioner gave his litiga-

tion papers to Mr. Brian D. Rohan, an attorney in the offices of Messrs. Hallinan, Shapiro and Hallinan. In the hearing of the demurrer on August 14, 1964 Mr. Brian D. Rohan appeared for petitioner and upon his request was granted an extension of twenty days for amending the complaint after the court had sustained the demurrer. On August 17, 1964 petitioner paid the requested fee of $50 to Messrs. Hallinan, Shapiro and Hallinan for filing the amendment. On September 3, 1964 Mr. Rohan requested and was granted a second extension of time "to and including September 11, 1964" for amending the complaint. But Mr. Rohan filed no amendment even though petitioner told Mr. Rohan many times of his concern that the respondents after September 11, 1964 could move the court any day to dismiss his complaint. Mr. Rohan had always excuses for not filing the amendment and promised to file it. He told petitioner, "Don't worry. When the court dismisses your complaint, we file another one. I pay the filing fee." He explained to petitioner that his cause is called "inverse condemnation", that the respondents violated his rights under the Fourteenth Amendment to the Constitution of the United States, and that the statute of limitations of the United States applies to his cause. Since Mr. Rohan did not amend the complaint and did not return the litigation papers and the fee to him, petitioner filed a complaint against Mr. Rohan on October 26, 1964 in the Municipal Court in San Francisco for the return of his litigation papers and his fee. On the same day petitioner gave a letter, addressed to the

Honorable Leland J. Lazarus, Presiding Judge of the Municipal Court, to an employee in the office of the court in which he informed the court of his complaint against Mr. Rohan and of his intention to amend his complaint, acting again in propria persona, as soon as he had received his litigation papers, which was a request for an extension of time. (Appendix page i.)

A Judgment of Default by Court was entered against Mr. Rohan on November 12, 1964 (No. 524400, Bk. Vol. 614 D, page 29360). Petitioner sent Mr. Rohan a copy of this judgment, but Mr. Rohan did not reply. Petitioner was informed in the office of the court on November 20, 1964 that a writ of execution against Mr. Rohan could not be entered since he had not listed the litigation papers in the judgment against Mr. Rohan which he had drawn up. An employee in the office of the court wished to ascertain which litigation papers Mr. Rohan had been ordered to return and inspected the file in the action of petitioner against the respondents, whereupon petitioner was utterly perplexed when he noticed that the file contained a Judgment of Dismissal with Prejudice entered against him on November 12, 1964 upon ex parte motion of the respondent State Compensation Insurance Fund. The respondent State Compensation Insurance Fund had sent three copies of this judgment to his former attorneys, but petitioner received no copy from them.

Employees in the office of the court told petitioner that the court could do nothing concerning the two judgments. Therefore, he appealed from the Judgment of Dismissal with Prejudice against him on

November 23, 1964 and from the Judgment of Default by Court on the following day to the Appellate Department of the Superior Court in San Francisco, California.

On November 28, 1964 petitioner received by mail from his former attorneys his litigation papers and other papers, among them correspondence and a stipulation between Messrs. Hallinan, Shapiro and Hallinan and the Attorney General of which his former attorneys had not informed him before, namely:

Letters by the Attorney General to Messrs. Hallinan, Shapiro, and Hallinan dated August 18 and September 29, 1964. (Appendix, pages ii, iv.)

Stipulation Extending Time to Plead between Messrs. Hallinan, Shapiro, and Hallinan and the Attorney General of California. (Appendix, page v.)

II.

PETITIONER FOR REASONS BEYOND HIS CONTROL COULD AND DID NOT ACT IN PROPRIA PERSONA BEFORE THE MUNICIPAL COURT IN OPPOSITION TO THE ASSERTIONS OF THE RESPONDENT STATE COMPENSATION INSURANCE FUND.

The respondent State Compensation Insurance Fund states many times throughout its brief in opposition that petitioner was granted leave to amend his complaint, that petitioner failed to file an amended complaint, and on page 5 of its brief that "thereafter, upon the request of an attorney acting for Mr. Brasch, time was extended to plaintiff to and including Sep-

tember 11, 1964 within which to amend his complaint." The respondent State Compensation Insurance Fund, however, had knowledge at all times that petitioner was represented by attorneys after he had filed his complaint because according to the CERTIFICATE OF SERVICE BY MAIL OF JUDGMENT OF DISMISSAL it sent a copy of this judgment to Gerhard Brasch, c/o Brian Rohan, Esq. (petitioner did not receive this copy), another one to Hallinan, Shapiro and Hallinan, and a third copy to Brian Rohan, Esq. (Record, Municipal Court.)

III.

PETITIONER'S ATTORNEYS DID NOT PROTECT THE RIGHTS OF PETITIONER.

While petitioner's attorneys represented him, they never informed him of their correspondence with the Attorney General of California, counsel for the respondent State Personnel Board and the stipulation, cited in I, supra, in which they granted the State Personnel Board time "up to and including the thirtieth day following the filing by plaintiff of his amended complaint in the above matter, in which to demur, answer or otherwise plead". Since petitioner's attorneys did not enter into any stipulations with the counsels for the respondents to protect the rights of their client and did not amend his complaint, the respondent State Compensation Insurance Fund could move ex parte for a judgment of dismissal with prejudice any time after September 11, 1964.

IV.

IT WAS NOT NECESSARY FOR PETITIONER TO MOVE THE MUNICIPAL COURT TO SET ASIDE THE JUDGMENT OF DISMISSAL WITH PREJUDICE.

The respondent State Compensation Insurance Fund argues for the *first* time several times in its brief in opposition that petitioner failed to move the Municipal Court to set aside the Judgment of Dismissal with Prejudice. In his notice of appeal petitioner prayed that "the Superior Court may annul the Judgment of Dismissal, transfer the complaint to the Superior Court . . ." By these words petitioner prayed that the Superior Court may set his cause for trial in the Superior Court since California Code of Civil Procedure § 988h (Appendix, page vi) authorizes the Superior Court to reverse any judgment of a municipal court and order a new trial. Petitioner pointed out on page 8 of his petition that he had pleaded the error of the Municipal Court in entering a Judgment of Dismissal with Prejudice in his opening brief. It was, therefore, not necessary for petitioner to move the Municipal Court to set aside the Judgment of Dismissal with Prejudice.

V.

CONCERNING THE ARGUMENT OF THE RESPONDENT STATE COMPENSATION INSURANCE FUND THAT "NO FEDERAL QUESTION WAS PROPERLY RAISED OR PRESERVED IN THE STATE COURTS".

In support of the above argument, the respondent cites *Bailey v. Anderson* (1945), 326 U.S. 203, 206-

207, which deals with a condemnation proceeding, in which the appellant "was given full opportunity to be heard and to introduce evidence before the Commissioners" (page 205) and "appellant, for the first time, assailed on constitutional grounds the asserted denial of interest by his assignments of error in the State Supreme Court of Appeals" (page 206). This case and the case of petitioner are not comparable since this case deals with a condemnation award, the appellant had a hearing, in which he could introduce evidence and the question from what date interest should be allowed on the condemnation award was first submitted upon Constitutional grounds in the highest court of the State, whereas petitioner claimed at the first opportunity in the courts below that the respondents denied him the equal protection of the laws and deprived him of property for public use without compensation and due process of law in violation of the cited provisions of the Fourteenth Amendment to the Constitution of the United States and that he never had an opportunity to amend his complaint in the trial court and to introduce evidence.

The next cited case in this context, *Live Oak Water User's Assn. v. Railroad Commission of California* (1925), 269 U.S. 354, 357-358, deals with a rate fixing order made by a commission and in which the writ of error was dismissed since "the constitutionality of the order itself was not definitely drawn in question before the state court prior to a petition for rehearing which was denied without more" (pages 354-355). Evidently this case and the case of petitioner are not

comparable for the reasons stated in the preceding paragraph.

The respondent discusses next "the trial court's Judgment of Dismissal". The court did not enter a judgment of dismissal; the court entered a Judgment of Dismissal *with Prejudice* based upon the false citation in the Oppenheimer case (*Oppenheimer v. Deutchman,* 132 CA 2d Supp. 875, 876-877) by the respondent State Compensation Insurance Fund in its Memorandum of Points and Authorities (Dismissal of Complaint).

The respondent then notes that "Mr. Brasch's petition does *not* show that he ever even entertained a thought of a federal question prior to the entry of that judgment adverse to him". This presumption is not substantiated by the facts of his case. Petitioner's attorney had told him that his cause is an example of "inverse condemnation" by a state in violation of the Fourteenth Amendment of the Constitution of the United States, that the statute of limitations of the United States applies to his cause and that his cause is not barred by the statute of limitations; but his attorney filed no amendment to his complaint; he just kept on promising to file it.

VI

CONCERNING THE ARGUMENT OF THE RESPONDENT STATE COMPENSATION INSURANCE FUND THAT "THE PETITION FAILS TO DEMONSTRATE THAT THE DECISIONS BELOW DID NOT REST UPON A STATE GROUND WHICH INDEPENDENTLY AND ADEQUATELY SUPPORTS THE JUDGMENT".

The denial of the appeal of petitioner by the Appellate Division of the Superior Court is not in accord with the decisions of this Court quoted on page 31 of his petition.

In support of its argument that the appeal of petitioner was properly denied by the Appellate Division of the Superior Court, the respondent quotes California Code of Civil Procedure, section 475, for the first time. This section provides that "no error or defect to be regarded unless it affects substantial rights". Petitioner had claimed in the courts below that the respondents denied him the equal protection of the laws and deprived him of property for public use without compensation and due process of law in violation of the cited provisions of the Fourteenth Amendment to the Constitution of the United States. This Court said in *Yick Wo v. Hopkins, Sheriff,* 118 U.S. 356 (1885): "The guarantees of protection contained in the Fourteenth Amendment of the Constitution extend to all persons within the territorial jurisdiction of the United States, without regard to differences of race, of color, or of nationality."

And in *United States v. Lynah,* 188 U.S. 445, 465 this Court held:

> "The government may take personal or real property whenever its necessities or the exigiencies of the occasion demand . . . but the Constitution in the Fifth Amendment guarantees that when this right of appropriation—this asserted paramount right—is exercised it shall be attended by compensation."

Since petitioner had claimed that the respondents denied him substantial rights, CCP 475 does not apply to his case.

Petitioner did not have to move the court of first instance to set aside the Judgment of Dismissal with Prejudice because he appealed from this Judgment with the Appellate Division of the Superior Court on basis of California Code of Civil Procedure §988h, which provides that

> "the superior court may review, . . . affirm, reverse or modify any judgment or order appealed from . . .". (Appendix, page vi.)

Title 31, U.S.C. §235: Limitation of suit states:

> "Every such suit shall be commenced within six years from the commission of the act, and not afterward, (R.S. §3494.) Derivation Act Mar. 2, 1863, ch. 67, §7, 12 Stat. 698."

Title 28, U.S.C. §2401. Time for commencing action against United States, provides:

> "(a) Every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. . . ."

Petitioner cited *Kendall v. United States,* 107 U.S. 123, 125 because this Court affirmed in this case that the statute of limitations of the United States is six years.

Petitioner explained already on page 9 of his petition that Government Code section 19630 does not apply to his cause. He cited *Philbrick v. State Personnel Board* (1942) 53 CA 2d 222, 127 P 2d 634 on page 12, lines 11-16 of his opening brief in the Superior Court. The citation of *Philbrick v. State Personnel Board* is stated in Deering's California Codes Annotated, Government Code, §§15260 to 22990, page 436, following Government Code §19630. (Appendix, page vii.)

Petitioner explained already on page 14, lines 1-14 of his opening brief in the Superior Court that *McFarland v. Holcomb* (1898), 123 Cal. 84, and his case are not comparable.

In support of its argument that "this Court has said where the highest court of a state delivers no opinion in rendering a judgment and it appears that the judgment *might* have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment", the respondent cites the following two cases.

In the first case, *Stembridge v. Georgia* (1952), 343 U.S. 541, 547, Stembridge was convicted of involuntary manslaughter. The Georgia Court of Appeals affirmed the conviction, and the Supreme Court of Georgia denied certiorari. His motion in the trial

court for a new trial on the ground of newly discovered evidence was denied. The Court of Appeals affirmed the denial of this motion on adequate state grounds. Petitioner then in a motion for rehearing for the first time claimed violation of his federal constitutional rights. The Court of Appeals denied the motion without opinion, and the Supreme Court of Georgia denied certiorari without opinion. In an amendment thereafter the Circuit Court of Appeals stated that it had considered the federal question and decided it adversely to petitioner. "Without seeking a review of this amending order in the Supreme Court of Georgia, petitioner applied to this Court for certiorari, which was granted." This Court dismissed the case since the Supreme Court of Georgia had not been asked to pass on the amending order. This Court further held that the Supreme Court of Georgia in denying certiorari for rehearing *might* have rested its decision on adequate State grounds because "the attempt to raise the question of constitutional rights in the general terms of the above quotation from the petition for certiorari did not begin to meet the requirement of the Supreme Court of Georgia for definiteness. . . . At this stage, the Supreme Court of Georgia could have denied certiorari on adequate state grounds."

The respondent avers that the decision of this Court in *Stembridge v. Georgia* applies to the case of peti tioner; evidently this contention is completely unsound since petitioner claimed at the first opportunity in the court of first instance and in the appel-

late court (when his former attorneys had returned his litigation papers to him) that the respondents denied him the equal protection of the laws and deprived him of property for public use without compensation and without due process of law in violation of the cited provisions of the Fourteenth Amendment to the Constitution of the United States and since the courts below denied his appeal, petition for rehearing, petition for a writ of certiorari and petition for a hearing without opinion. Furthermore, this case and the case of petitioner are not comparable, as explained immediately above.

In the second cited case, *Fay v. Noia* (1963) 372 U.S. 391, 428, Noia and his codefendants were convicted in a New York State Court of murder committed during a robbery, and each was sentenced to life imprisonment; the sole evidence against each was his confession. Respondent did not appeal. The codefendants did not accomplish their appeals, but they were successful in subsequent proceedings and released on the ground that their confessions were coerced and their convictions violated the Fourteenth Amendment. Thereafter, the State Court denied Noia coram nobis review of his conviction since he had not appealed. A Federal District Court denied Noia a writ of habeas corpus holding that his failure to appeal was a failure to exhaust available state remedies. The Court of Appeals reversed. This Court affirmed the judgment of the Court of Appeals on other grounds. Obviously, for the grounds given in the preceding case, this case and the case of petitioner are not comparable.

Furthermore, the respondent asserted that this Court held in *Fay v. Noia* "That where the highest court of a state delivers no opinion in rendering a judgment, and it appears that the judgment *might* have rested upon a nonfederal ground, the Court will not take jurisdiction to review the judgment". However, this Court stated positively on page 428 as follows: "It is a familiar principle that this Court will decline to review state court judgments which rest on independent and adequate state grounds, notwithstanding the copresence of federal grounds."

Since the courts below denied the claims of petitioner without opinion that the respondents denied him the claimed, specific rights under the Fourteenth Amendment to the Constitution of the United States, as set forth in the preceding case, their decrees are not in accord with the holding of this Court in *Fay v. Noia.*

VII

CONCERNING THE ARGUMENT OF THE RESPONDENT STATE COMPENSATION INSURANCE FUND THAT "THE PETITION DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION".

On this point the respondent cites two decisions of this Court in support of its assertion that the petition of petitioner "fails to contain any special and important reasons for the granting thereof".

In the first case, *Hammerstein v. Superior Court of California, et al.* (1951) 341 U.S. 491, 492, petitioner

did not appeal from a default judgment of the Superior Court but applied to the District Court of Appeal for a writ of prohibition, which did consider the federal question in denying the writ. The Supreme Court of California denied a writ of certiorari on adequate state grounds, namely, the failure of petitioner to appeal from the default judgment. Petitioner applied for a writ of certiorari with this Court. This Court held that since petitioner had not appealed from the default judgment, there was no final judgment rendered "by the highest court of a State in which a decision could be had", 28 U. S. C. §1257, this Court had no jurisdiction "to review the proceedings arising from the default judgment".

Obviously, this case and the case of petitioner are not comparable since petitioner claimed denial of his Constitutional rights, as explained before, at the earliest opportunity in the courts below and the Supreme Court of California in its decree decided against these claimed rights without opinion.

The second case, *Rice v. Sioux City Memorial Park Cemetery, Inc. et al.*, 349 U.S. 70, 73 deals with an action by petitioner for damages for mental suffering flowing from the refusal of a cemetery to bury her husband, a Winnebago Indian, after services had been conducted at the graveside. The contract of sale of the burial lot also provided that "burial privileges accrue only to members of the Caucasian race". The trial court held that the clause was not void but was unenforceable as a violation of the Constitutions and public policy of Iowa and of the United States. The Supreme

Court of Iowa affirmed. This Court granted a writ of certiorari and affirmed the judgment of the Supreme Court of Iowa. Upon consideration of a petition for rehearing before a full Court, it appeared that Iowa had passed remedial legislation since the commencement of this litigation so that the ultimate question would not again arise in Iowa. The Court vacated the judgment of affirmance and dismissed the writ of certiorari since in this case the special and important reasons for granting the writ of certiorari required by Supreme Court Rule 19 no longer were present.

This case and the case of petitioner are not comparable because in his case the Supreme Court of California denied summarily and without opinion his claims that the State of California denied him the equal protection of the laws and deprived him of property for public use without compensation and due process of law in violation of the cited provisions of the Fourteenth Amendment to the Constitution of the United States and in disregard of the applicable decisions of this Court as he submitted in his reasons for granting the Writ. (Petition for a Writ of Certiorari pages 25-31).

Petitioner respectfully submits that the special and important reasons required by Rule 19 of the Rules of the Supreme Court, 28 U.S.C., for granting review on writ of certiorari are present in his case. Petitioner claimed that the Supreme Court of California without opinion denied his claims that the respondents denied him the equal protection of the laws and deprived him of property for public use without com-

pensation and due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States. Concerning claims involving the denial of Constitutional rights this Court said: "It is of prime importance that no constitutional freedom, least of all the guarantees of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made." The state courts "must act in subordination to the duty of this Court to enforce constitutional liberties even when denied through spurious findings of fact in a state court. Compare *Chambers v. Florida,* 309 U.S. 227." *Milk Wagon Drivers' Union of Chicago v. Meadowmoor Dairies, Inc.* 312 U.S. 287, 293, 298-299.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Dated, San Francisco, California,
October 26, 1965.

GERHARD BRASCH,
Petitioner in propria persona.

(Appendix Follows)

Appendix

3035 Gough Street, Apt. 8
San Francisco, California 94123
October 26, 1964

The Honorable Leland J. Lazarus
Presiding Judge of the Municipal Court
City Hall
San Francisco, California

Re: Brasch vs. State Compensation Insurance Fund
State Personnel Board
Complaint No. 519083,
Municipal Court

Your Honor:

Mr. Brian D. Rohan no longer has power of attorney to represent me in the above matter. I had paid Mr. Rohan $50 on August 17, 1964 for filing an amendment to my complaint. Mr. Rohan promised me many times to file this amendment; however, he did not do it. Therefore I filed a complaint against Mr. Rohan today for the return of my payment and of my litigation papers. As soon as I shall have received my papers, I will submit an amendment to my complaint, acting again in propria persona. For the information of Your Honor I am enclosing a copy of this complaint.

May I take the liberty of mentioning that my suit against Mr. Rohan proves that I, who never formally studied law through class instruction or by correspondence, could not find an attorney willing to represent me in the above matter even though I had

paid the fee of more than one attorney in the belief that he would file a complaint.

Respectfully submitted,
Gerhard Brasch.

Enclosure.

Letterhead of
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
STATE BUILDING, SAN FRANCISCO 94102

August 18, 1964

Hallinan, Shapiro & Hallinan
Attorneys at Law
345 Franklin Street
San Francisco, California

Attention Mr. Brian D. Rohan

Re: Gerhard Brasch v. State Comp. Ins. Fund and State Personnel Board
San Francisco Municipal Ct. No. 519083

Dear Sirs:

This office represents the State Personnel Board in the above referred to action. We have been informed that you have been retained to represent the plaintiff and that the demurrer of the State Compensation Insurance Fund which was heard on August 14 was sustained with leave to amend.

Our time to answer on behalf of the State Personnel Board expires on August 28. It would save time and trouble for all parties if we could enter into an agree-

ment whereby the State Personnel Board would not have to appear until ten days after it is served with the Amended Complaint even though that may occur after August 28. If you are in agreement with this, will you please send us a letter to that effect.

Your courtesy in this matter is appreciated.

Very truly yours,
STANLEY MOSK,
Attorney General
By Robert L. Bergman,
Deputy Attorney General

RLB:MSM

Letterhead of
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
STATE BUILDING, SAN FRANCISCO 94102

September 29, 1964

Messrs. Hallinan, Shapiro & Hallinan
Attorneys at Law
345 Franklin Street
San Francisco, California

Attention Mr. Brian D. Rohan

Re: Gerhard Brasch v. State Compensation Insurance Fund and State Personnel Board
San Francisco Municipal Court No. 519083

Dear Mr. Rohan:

Enclosed is a stipulation extending time to plead, pursuant to our recent telephone conversation. If this meets with your approval, I would appreciate your dating, signing, and returning to me the original and two copies, including the one marked "ATTORNEY GENERAL—OFFICE COPY." The other copy is for your file.

Thank you very much for your courtesy.

Yours very truly,
THOMAS C. LYNCH
Attorney General
LEONARD M. SPERRY, Jr.
By Leonard M. Sperry, Jr.
Deputy Attorney General

LMS:FC
5 encls.

Thomas C. Lynch
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6000 State Building
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Attorneys for Defendant,
State Personnel Board

In the Municipal Court of the City and County
of San Francisco
State of California

No. 519083

Gerhard Brasch,
Plaintiff
vs.
State Compensation Insurance Fund
and State Personnel Board,
Defendants

STIPULATION EXTENDING TIME TO PLEAD

It Is Hereby Stipulated by and between counsel for plaintiff and defendant State Personnel Board that said defendant may have up to and including the thirtieth day following the filing by plaintiff of his amended complaint in the above matter in which to

demur, answer, or otherwise plead. This stipulation may, but need not, be filed.

Dated: ....., 1964.

Hallinan, Shapiro & Hallinan
by Brian Rohan
Attorneys for Plaintiff
Thomas C. Lynch
Attorney General of California
Leonard M. Sperry, Jr.
Deputy Attorney General
Leonard M. Sperry, Jr.
Attorneys for Defendant
State Personnel Board

Deering's California Codes Annotated, Civil Procedure, §§ 802 to 1059 (1959), pages 541-542:

§ 988h. [*Scope of review and powers of superior court: New trials: Damages added to costs where appeal was taken for delay.*] Upon an appeal from a municipal court, the superior court may review the verdict or decision and any intermediate ruling, proceeding, order or decision which involves the merits or necessarily affects the judgment or order appealed from or which substantially affects the right of a party, including, on any appeal from the judgment, any order on motion for a new trial, and may affirm, reverse or modify any judgment or order appealed from, and may direct the proper judgment or order to be entered, and may, if necessary or proper, direct

a new trial or further proceedings to be had. The respondent, or party in whose favor the judgment was given, may, without appealing from such judgment, request the court to and it may review any of the foregoing matters for the purpose of determining whether or not the appellant was prejudiced by the error or errors upon which he relies for reversal or modification of the judgment from which the appeal is taken. If there be a new trial, it must be in the municipal court. If it appears to the superior court that any appeal was taken solely for delay, it may, on dismissal of such appeal or affirmance of the judgment or order appealed from, add to the costs of appeal such damages as may be just, not exceeding 25 percent of the judgment appealed from, if it be a judgment for money, or 25 percent of the value of the property if it be a judgment for the recovery of specific personal property.

Deering's California Codes Annotated, Government Code, §§ 15260 to 22990, at page 436:

This section was intended to apply only to the claims of individuals, particularly salary claims of employees or those who had been separated from the service. Philbrick v. State Personnel Board (1942) 53 CA2d 222, 127 P2d 634.